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FEDERAL COMMUNICATIONS COMMISSION
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January 23, 2001

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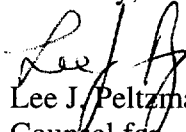
Re: MM Docket No. 00-87
RM-9870, 9961
Opposition

Dear Ms. Salas:

Transmitted herewith, on behalf of Madras Broadcasting, is an original and four (4) copies of its Opposition to Reply to Order to Show Cause in the above-referenced proceeding.

Should any questions arise concerning this submission, kindly communicate with the undersigned.

Sincerely,


Lee J. Peltzman
Counsel for

MADRAS BROADCASTING

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JAN 23 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Amendment to §73.202(b))	MM Docket No. 00-87
Table of Allotments)	RM-9870
FM Broadcast Stations)	RM-9961
(Brightwood, Madras, Bend and)	
Prineville, Oregon))	

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

OPPOSITION

Madras Broadcasting ("Madras"), by its attorney, hereby files its Opposition to Reply to Show Cause filed by Combined Communications, Inc. ("Combined"), licensee of Station KTWS(FM), Bend, Oregon. In support of its position, Madras states the following:

Combined's arguments go beyond those contemplated in a Commission Order to Show Cause, which should be limited to a discussion of the impact of the channel change on its station. Moreover, its assertions are basically repetitious of those made earlier in its previous July 25, 2000, Comments attacking the Madras rule making. It claims that the Madras Counterproposal is an inefficient allocation of spectrum and that it imposes an unfair burden on Combined because assignment of a new channel to Station KTWS(FM) will allegedly be disruptive and cause listener confusion and loss of listenership and revenues. With respect to the latter assertion, it again references back to the experience of its sister facility, Station KLRR(FM) licensed to Redmond, Oregon, which had to move 29 channels from Channel 298C2 to Channel 269C2 and, apparently, had an unhappy experience.

Of course, Combined cites no Commission case support for its equitable argument because it knows that none exists. As the Commission itself pointed out in its Order to Show Cause, DA 00-2604, released November 17, 2000, Madras, in accordance with Commission policy, has stated its intention to reimburse Combined for the reasonable costs associated with its channel substitution. Whatever occurred with respect to Station KLRR(FM), it is irrelevant to the Madras commitment or the state of the law. Moreover, from a practical viewpoint, it is hard to accept Combined's arguments regarding the future ordeal facing it when all it will have to do is to relocate one channel. The Commission's Order to Show Cause stated that Combined should provide a "showing with particularity" as to why its license should not be modified. Its speculative argument of future chaos does not even attempt to meet that particular standard.

Nor does Combined's inefficient use of spectrum argument, again made in its July 25, 2000, Comments, raise a substantial and material question of fact in this proceeding. Combined points to alternate channels available to be allotted to serve Madras. Its argument repeats those arguments made repeatedly by Muddy Broadcasting Company ("Muddy"), the Brightwood, Oregon, rule making proponent. However, as Madras has discussed previously, virtually all of the channels which are cited are of a lesser class than that specified by Madras in its Counterproposal. Of the two Class C1 channels which are now proposed by Combined, there is no question but that massive terrain blockage exists between the allotment site proposed by Muddy for Channel 291C1 and the community of Madras. See Reply Comments of Madras Broadcasting, filed October 5, 2000, at para. 8. Neither Muddy nor Combined proposed an alternative site which did not have such severe blockage. Combined now claims instead that another Class C1 channel is available, Channel 227C1, and that this is "clearly superior" to the proposed use of Channel 251C1 at Madras. However, Combined acknowledges that Channel

227C1 can be allocated to Madras only by substituting Channel 230A at Condon, Oregon, for Channel 228A. The Commission's Notice of Proposed Rule Making in this proceeding, 15 FCC Rcd 8964, 8971 (2000), specifically noted that counterproposals would be considered if advanced in initial comments but would "not be considered if advanced in reply comments." See also Section 1.420(d) of the Commission's rules. Therefore, the proposed Channel 227C1 allotment, including a change of channels at Condon, cannot properly be considered as an alternative to Channel 251C1.

Moreover, Combined's attempted use of population figures is irrelevant to the Order to Show Cause. Madras demonstrated in its Counterproposal that the allotment of a first service to Madras, a significantly larger community than Brightwood, Oregon, would serve the public interest under the Commission FM allotment priorities. See Athens and Atlanta, Illinois, 7 FCC Rcd 3445 (1996). Under those rule making priorities, the proposal to serve a community having a greater population with a first local service is far more important than the claim to serve more people within the service area. See Obion and Tiptonville, Tennessee, 7 FCC Rcd 2644 (1992). While Combined goes to great lengths to stress comparative population figures, it is important to note that at no time does it state that any of the populations and areas that it discusses is under served. As such, its discussion of numbers, most of which have to do with channels which cannot be technically allocated to the community of Madras, is irrelevant.

Finally, Combined speculates as to the future conduct and the present intentions of Madras. It claims that it is "highly unrealistic" that the proposed channel will ever be activated and that the "only purpose served by the proposed allocation is to block the assignment of Channel 251C3 to Brightwood."¹ Speculation and conjecture do not constitute a valid

¹ Combined Reply to Order to Show Cause, filed January 8, 2001, at p. 9.

substitution for substantial and material questions of fact. Madras would not be proceeding through this rule making were it not interested in operating a Madras station on Channel 251C1. Madras is under no legal obligation and it has no desire to operate another inferior class channel at Madras. It does not seek to block the assignment of any channel to Brightwood except as the proposed allotment to that community interferes with the allotment of Channel 251C1 to the community of Madras. Moreover, if Combined truly believes that "it is highly unrealistic" that Channel 251C1 will ever be activated at Madras, then its entire argument that service to Station KTWS(FM) will be disrupted makes no sense since that station will only be forced to substitute channels when a station is constructed on Channel 251C1 at Madras. Madras proposes a tower with a height of 981 feet, not "a tower of at least 1,000 feet or more." Combined in no way demonstrates with specificity that Madras will be unable to construct its station at its proposed site. Nor does it demonstrate that the Madras counterproposal was unacceptable when filed. To the contrary, the Madras counterproposal was technically correct and substantially complete when filed. See Provincetown, Massachusetts, 8 FCC Rcd 19, 20 (1992).² Neither is this a case in which Madras has filed its technical proposal on an untimely basis. Cf. Jefferson City, Tennessee, 13 FCC Rcd 2303, 2305 (1998) (while line-of-sight issue raised during proceeding, the proponent did not deal with the issue until it filed a Petition for Reconsideration of its proposal's dismissal).

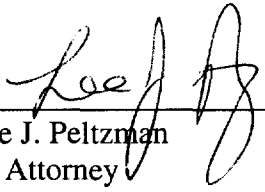
² The cases cited by Combined, Provincetown, Massachusetts, *supra*, and Fort Bragg, California, 6 FCC Rcd 5817 (1991), involved counterproposals with clear technical errors such as having no site coordinates or any engineering study or technical showing.

In view of the above, it is clear that Combined has not raised a substantial material question of fact regarding why its license should not be modified. As such, the Commission should approve the Madras counterproposal and grant the proposed modification of Station KTWS(FM) to specify operation on Channel 253C3 at Bend, Oregon.

Respectfully submitted,

MADRAS BROADCASTING

By: _____


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Its Attorney

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January 23, 2001

CERTIFICATE OF SERVICE

I, Linda E. Skiles, Office Administrator, in the law firm of Shainis & Peltzman, Chartered, do hereby certify that on this 23rd day of January, 2001, copies of the foregoing document were sent via first-class United States Mail to the following:

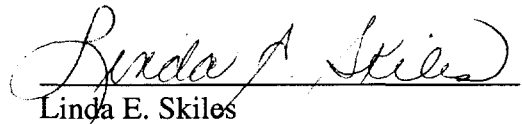
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